IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUMMARY SUIT NO.1070 OF 1982

1. Wingate Limited .. Plaintiff

Versus

1. M/s. Valco Farms

2. R.A.J. Lines Limited .. Defendants

Mr. R.S. Tripathi for Plaintiff
None for Defendants

CORAM : S.R. SATHE,J.
DATED : 13/06/2007

ORAL JUDGEMENT :-

1. Plaintiff Company has filed this suit against the defendants for recovery of the sum of US $ 29040/- (equivalent to Rs. 2,77,332/-) and interest thereon at the rate of Rs.15% per annum from the date of the suit till realization of the amount.

2. The Plaintiff's case in brief is that Plaintiff is Shipping Company incorporated under laws of Liberia having its registered office at 80, Broad Street, Liberia. Plaintiff is and was at all relevant time the owner of the vessel M.V. “Jihad-I” hereinafter referred to as the said vessel.

3. The defendant No.1 is a registered partnership firm doing business at Mumbai. They are the dealers and

exporters of live stock. The defendant No.2 is carrying on shipping business as owner and charterer in Mumbai.

4. On 01/06/1981, Plaintiff and defendant No.2 entered into a contract as charter for the said vessel. The Plaintiff gave the said vessel on hire to defendant No.2 for the period of 12 months. As per the charter agreement it was agreed that the owners shall have a lien upon all cargos for any amount due including general average contributions and all moneys paid in advance and not earned. It was also agreed that charterers will not suffer not permit to be continued in lien or encumbrance incurred by them or their agent which might have priority over the title and interest of the owners in the vessel. As per the charter the defendant No.2 did procure bank guarantee on 01/06/1982 at Port of Bombay. Cattle live stock was loaded in the said vessel for delivery at the Port of Damama in Arabian Gulf. The first defendants were the Shippers of the said cargo. By that time, considerable amount of freight due under the said charter party by the defendant No.2 to Plaintiff was unpaid. The total amount that was due from defendant No.2 was US$ 7,334.5/-.

5. The Plaintiff decided to exercise its right of lien and informed the defendant No.1 of the outstanding amount from defendant No.2 and that Plaintiff was exercising its lien on the bill of lading for freight due from first defendant to the second defendant. The first defendant was directed to pay the said freight to Plaintiff instead of defendant No.2.

6. On 03/06/1982, Plaintiff's agent addressed a telex to first and second defendant and informed them about the dues. The Plaintiff stated that it would release the bill of lading for the cargo on board the said vessel only if, the Plaintiffs dues are paid by defendant Nos. 1 and 2. As a result of the same, there was discussion between Plaintiffs and the first and second defendant to sort out the problem. On 03/06/1982, the defendant No.2 directed letter to Plaintiffs agent authorizing them to engage the bank guarantee towards the outstanding chartered hire. The defendant No.1 in their turn addressed a letter on the same day to the said agents promising to remit US$29040/-. The defendant No.1 promised to make the said payment immediately on plaintiffs releasing bill of lading for the cargo and the first defendant negotiating their letter of credit. Simultaneously,

letter addressed by second defendant to Plaintiff was countersigned by defendant No.1. As a result of the said letter, Plaintiff withdrew its lien both on the freight lying in the hands of the first defendant as well as on the cargo shipped by first defendant on board the said vessel. In consideration for the said undertaking given by defendant No.1 the plaintiffs released to the defendants the bill of lading for the said cargo. The defendant No.1 negotiating the bill of lading with other documents to the purchaser of the said cargo and received the payment on the basis of their letter of credit. However, the defendant No.1 failed to pay to the Plaintiffs US $ 29040/-. When Plaintiffs demanded the said dues the defendant No.1 informed that they have applied to Reserve Bank of India for a permission to remit charter hire and that remittance will be made on 11th and 12th of June. In spite of that defendants failed to make the payment. The cargo was also delivered to the consignee on 12th June and then defendant conveyed their refusal to make the payment on the ground that a number of head of cattle on board the vessel had perished in the course of the voyage and according to them this loss was due to Plaintiff's default. Hence, ultimately Plaintiffs filed the present suit.

7. The defendant No.1 filed its Written Statement and opposed the suit claim on several grounds. They firstly contended that there is no privity of contract between Plaintiff and them and no cause of action has arisen against them and suit is liable to be dismissed.

8. The defendant No.1 further contended that they are not liable to make any payment in respect of the amount which was in fact due from defendant No.2 to Plaintiff. They further contended that the letter dated 03/06/1982 is written by them to the Plaintiff under threat and coercion by the Plaintiff and under peculiar circumstances. According to defendant No.1 the Ship was loaded on 03/06/1982, however, it sailed on 06/06/1982. Plaintiff refused to sail the vessel till their dues were satisfied. The defendant No.1 was, therefore, afraid that animal already loaded on the ship may either perish or deteriorate in their health as there was no sufficient water and food loaded in the vessel. According to defendant No.1, in the course of the voyage about 100 out of 450 animals perished and the rest were delivered in bad shape. As a result of it defendant No.1 lost its customer and defendant No.1 thus sustained loss. The defendant No.1 contended that

under these circumstances, they countersigned the letter addressed by defendant No.2 to Plaintiff and contended that Plaintiff was not entitled to exercise any alleged lein on the cargo.

9. The defendant also contended that they have not given any promise to the Plaintiff as alleged and as such they are not liable to make any payment. Hence on all these grounds the defendant No.1 prayed for dismissal of the suit.

10. The defendant No.2 did not file any Written Statement though served. On these pleadings this Court (CORAM : V.C. DAGA,J.) has framed following issues. I have given my findings as mentioned against the same.

ISSUES	**FINDINGS**
1. Whether the Plaintiff proves that the undertaking and written promise to pay the Plaintiff's i.e. US$ 29,040/- as per letter dated 3rd June, 1982 of the Defendant No.1 addressed to the Plaintiff's Agent-Univan Ship Management, Honkong is binding upon the 1st Defendant and amounts to promise to pay their liability?	**YES**

2. Whether the Plaintiff proves that the Plaintiff is entitled to recover the sum of US $ 29,040/- (equivalent to Rs. 2,77,332/-) with interest thereon at the rate of 15% per annum from the date of the suit till judgement and further interest at the rate of 15% per annum from the date of judgement till payment or realization and costs of the suit?	**Plaintiff is entitled to recover sum of US $ 29,040/- (equivalent to Rs.2,77,332/-) and interest on the said amount at the rate of 6% per annum from the date of the suit till realization of the amount.**
3. Whether the Defendant No.1 proves that the letter dated 3rd June, 1982 of the Defendant No.1 addressed to Univan Ship Management (Exhibit E to the Plaint) and another letter dated 3rd June, 1982 of the defendant No.2 countersigned by the Defendant No.1 to Univan Ship Management (Exhibit D to the Plaint) was written and signed under threat and coercion by the Plaintiff and thus the same are not binding upon the defendant No.1 ?	**NO**

ISSUE NOS. 1 AND 2

11. The learned Advocate for the Plaintiff submitted at bar that Plaintiff is not pressing their claim against the defendant No.2.

12. In order to prove the suit claim Plaintiff filed affidavit of one Pradeep Singh Naramolak Hooghan the Constituted Attorney of the Plaintiff and a person who was employed in their agent's office i.e. Univan Ship Management Limited at Mumbai. He has stated on oath that Univan Ship Management Limited is the agent

of Plaintiff and Plaintiff is the Shipping Company and owner of the vessel MV Jihad-I. The defendant No.2 had made a charter party agreement dated 01/06/1981 with Plaintiff. On 01/06/1982 when the vessel arrived at Port of Bombay, defendant No.1 being Shippers of the Cargo loaded live stock for the destination Port of Damam in the Arabian Gulf. He has also stated that towards the amount of freight plaintiff decided to exercise its lien on the said vessel as per clause-18 of the charter party and Univan Ship Management was given authority to act on behalf of Plaintiff. They, therefore, sent telex dated 02/06/1982 to the defendant No.1 and informed the defendant No.1 that plaintiff would exercise its lien on the bill of lading otherwise, they should pay the freight. He has also stated that defendant No.1 wrote a letter dated 03/06/1982 to Plaintiff's agent promising to remit sum of US $ 29040/-. This payment was promised to be made by defendant No.1 immediately on Plaintiffs releasing the bill of lading for the cargo and the first defendant encashing the letter of credit. The letter written by defendant No.2 to Plaintiff is countersigned by the defendant No.1 while letter written by defendant No.1 to Plaintiff is countersigned by defendant No.2. As a result of these letters plaintiff withdrew its

lien on the freight and the cargo on board and issued bill of lading dated 02/06/1982. Accordingly, the defendant no.1 presented bill of lading alongwith other documents to the consignee and the defendant No.1 received full payment. However, defendant No.1 failed to pay Plaintiff or to their Agent the sum of US $29040/- as promised. Hence, the said amount is due from defendant No.1. At the outset it must be mentioned that all this evidence of Plaintiff's witness has gone totally unchallenged in as much as the defendant No.1 remained absent on the date when the Plaintiff's witness was to be cross-examined. We find that Plaintiff has produced the original letter written by defendant No.2 to M/s. Univan Ship Management on 03/06/1982 and countersigned by defendant No.1. So also the letter written by defendant No.1 to Plaintiff's agent M/s. Univan Ship Management promising to make payment of US$ 29040/-. Plaintiff has also produced the copy of the bill of lading and charter party agreement. All these documents shall have to be accepted while considering the claim of the Plaintiff.

13. The defendant had taken the contention that there is no privity of contract between Plaintiff and defendant No.1 and as such defendant No.1 is not

liable. However, firstly it has to be noted that admittedly M/s. Univan Ship Management is agent of Plaintiff Wingate Limited. This can be seen from the charter party agreement as well as from the affidavit of the Plaintiff's witness which has gone totally unchallenged. From other correspondence viz. the telex message and the bill of lading, copy of the charter party agreement and the letter of promise given by the defendant No.1 and 2. It does appear that the defendant No.1 were the Shippers of the Cargo in question and they had full knowledge that M/s. Univan Ship Management was acting far and on behalf of Wingate Limited. In other words, that M/s. Univan Management is agent of the Plaintiff. From the evidence it is also clear that whatever promise was given was in respect of the cargo loaded on the vessel Jihad-I. So, though the defendant No.1 had not directly given the promise to pay US$ 29040/- to Plaintiff by the letter written to Plaintiff's agent M/s. Univan Ship Management, they had agreed to make the payment for the cargo in question. Incidently, it must be noted that it is not even the contention of the defendant that bill of lading was not released or that on that basis the goods were not delivered to the Purchaser and the defendant No.1 did not receive the amount. So, taking into consideration

all these facts it has to be said that the defendant No.1 had in fact agreed to make the payment to M/s. Univan Agency for being paid to the Plaintiffs who are the owners of the vessel.

14. It is not in dispute that the charges that are claimed are towards freight and as per the provisions of Section-2 of the Bill of Lading Act, 1855. The Ship owner has a right to claim the freight from the Shippers of the goods. What is most important is that even in the Written Statement defendant No.1 has stated:-

> *" This defendant states that the letter, dated 03/06/1982, by this defendant to the Plaintiff had been written by this defendant under threat and coercion by the Plaintiff under following circumstances."*

15. So, by this statement and the other statements in the Written Statement also it is very clear that though the said letter dated 03/06/1982 was addressed to M/s. Univan Ship Management, the defendants were in fact conscious of the fact that they were contracting or negotiating or giving promise to Wingate Limited i.e. to the Plaintiff. So, now merely because the letters dated 03/06/1982 are addressed to M/s. Univan

Ship Management, the defendant No.1 can not be permitted to say that the promise was in fact given to M/s. Univan Management and it has nothing to do with Plaintiff. I have, therefore, answered issue Nos.1 and 2 accordingly.

ISSUE NO.3

16. Though defendant No.1 has contended that the letter dated 03/06/1982 was written by them to plaintiff under peculiar circumstances and due to threat and coercion by the Plaintiff, the defendant No.1 has not adduced any evidence in that behalf. The defendant No.1 has not even challenged the evidence given by Plaintiff's witness. The defendant No.1 did not adduce any evidence. So, I have no hesitation to hold that defendant No.1 has failed to prove that letter dated 03/06/1982 was written and signed under the threat and coercion. Hence I have answered issue No.3 in the negative.

17. It must be noted that though the defendant No.1 has contended that there was delay in sailing the vessel and as a result of the same, there was damage to live stock loaded on the said vessel by the defendant No.1 and as a result of the same, defendant No.1

sustained loss, defendant No.1 has not stepped into the witness box and not adduced any evidence to prove their contention. On the contrary, the entire evidence of Plaintiff has also gone totally unchallenged. So, I have no hesitation to hold that the defendant No.1 has failed to prove that Plaintiffs caused any loss to the cargo in question.

18. The Plaintiff has claimed interest at the rate of Rs.15% per annum on the amount i.e. due from the defendant No.1. However, if we see the documents produced by the Plaintiff we find that there is no even a single document where defendants had agreed to pay interest to Plaintiffs or their agents. Plaintiff has not issued any notice to defendants informing them that if amount claimed is not paid in time they will be required to pay 15% interest. So, I am not inclined to grant interest @ 15 % per annum as claimed. Hence, I pass following order :-

O R D E R

Defendant No.1 to pay Plaintiff a sum of US $29,040/- (equivalent to Rs.2,77,332/-) and future interest on the said amount @ 6% per annum from the date of the suit till realization of the amount.

The defendant No.1 to pay Plaintiff costs of this suit and bear their own.

(S.R. SATHE,J.)